

# UNITED NUCLEAR CORPORATION

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October 19, 1994

Mr. John Lingo  
Acting Director  
Mining and Minerals Division  
New Mexico Energy, Minerals and Natural Resources Department  
2040 South Pacheco Street  
Santa Fe, New Mexico 87505

RE: Reply to August 25, & Various August 31, 1994 Letters

Dear Mr. Lingo:

This letter is in reply to your August 25, 1994 letter regarding United Nuclear Corporation's (United Nuclear) position concerning the extent of it's obligations, if any, under the New Mexico Mining Act with respect to several mines. This also responds to the several letters dated August 31, 1994 regarding your notification that certain mining operations may require a site assessment.

We appreciated the opportunity to meet with your staff, Messrs. Shepherd, Jager, and Martinez, on September 16, 1994 to discuss these issues and clarify the circumstances, locations, and history of several of the mines. The following summarizes United Nuclear's position with respect to the mining Act.

United Nuclear made a decision in 1984, several years before the Act was passed, to discontinue it's mining operations, and has been and remains in the process of liquidating the remaining assets of it's former mining operations. As such, United Nuclear believes that all of the mine properties it operated are "abandoned" mines as contemplated by the Mining Act. United Nuclear currently holds no ownership or leasehold interest in these mines, and does not currently operate any of the mines.

United Nuclear believes that it has no obligation to comply with the permitting and other regulatory requirements of the New Mexico Act for these mines. The New Mexico Mining Act was never intended to cover the reclamation of abandoned mines, except to the extent that Section 19 of the Act creates the "inactive or abandoned non-coal mine reclamation fund" which was established "to conduct reclamation activities on abandoned or inactive non-coal mining areas." § 69-36-19 NMSA. Although it is apparent that an "existing mining operation" is defined in a manner that could include an inactive mining operation, there is no provision in the Act which establishes that a person who has no current ownership interest and is not currently an operator of an inactive mine is required by law to undertake the obligations of the Act. The Act refers to "the owner or operator" in the present tense, and makes no reference to any liability for former owners or operators. Absent any clear statutory provision stating that the Mining Act applies retroactively to cover an owner or operator of an abandoned mine, New Mexico case law is clear that the law will not be construed to apply retroactively. *Psomas v Psomas*, 661 P.2d 884, 887 (N.M. 1987). Federal laws containing similar language imposing regulatory liability

October 19, 1994

Page 2

upon owners and operators have been construed to apply only to current, and not former, owners and operators. See *Coburn v. Sun Chemical Corporation*, 28 E.R.C. 1668 (E.D. Pa. 1988) (regulatory requirements of the federal hazardous waste management regulations apply only to current owners and operators, and past operators are not liable for current regulatory violations).

The definition of "existing mining operations" serves an important purpose other than arguably subjecting inactive mines to reclamation requirements under the Mining Act. It establishes a cutoff regarding how recently an inactive mine must have been operated and in production to qualify as an "existing mining operation," rather than a "new mining operation", if mining begins again. An inactive mine that does not meet the definition of "existing mining operation" does not qualify for the "grandfathered" authorization to operate before a permit is issued, and unless it was in operation when the Act was passed, would have to obtain a permit as a "new mining operation" before mining could be renewed. Therefore, this definition alone does not establish that persons who are not current "owners or operators" of inactive mining operations are subject to the regulatory requirements of the Mining Act and the rules.

In addition to the arguments presented above, parts or all of United Nuclear's former uranium mines may be exempt from the Mining Act and the rules pursuant to the definitions of "mineral" and "mining" in the Act. While this letter focuses on certain arguments and provisions of the Act, United Nuclear does not intend to waive any other legal arguments it may have with respect to the New Mexico Mining Act's application to United Nuclear with respect to these mines. For example, we understand that MMD is still considering its position with respect to the application of the Act upon Indian lands.

Our position notwithstanding, the following is a discussion of each of the mines for which MMD had requested information.

#### Mac #1 and Section 31 Mines

At the September 16 meeting, we discussed with your staff the August 31, 1994 notices received for the Mac#1 Mine and the Section 31 Mine (Section 31, T13N R9W). The Mac#1 Mine, to the best of United Nuclear's knowledge, is not an existing mining operation because it did not have at least two years of production after 1970. Furthermore, we understand that Homestake Mining Company, the successor to the UNHP Partnership, and to which Homestake is the successor in interest, has provided correspondence to MMD addressing this mine. *No* ?

Regarding the Section 31 Mine, our information indicates that it was not operated by United Nuclear after 1970. Even so, at the meeting, MMD staff clarified that this mine is covered under an application submitted by Santa Fe Pacific Gold Corporation for inspection of the mine to evaluate prior reclamation. *True*

October 19, 1994

Page 3

Anne Lee, John Bill and Sandstone Mines

As acknowledged during the meeting, United Nuclear has submitted applications dated August 26, 1994 for inspection of "prior reclamation" for three mines in the Ambrosia Lake District, the Anne Lee Mine (Section 28, T14N, R9W), John Bill Mine (Section 34, T14N, R9W), and Sandstone Mine (Section 34, T14N, R9W). These applications were submitted inasmuch as United Nuclear is the owner of the surface of these properties and the Mining Act is vague as to responsibility for such properties.

As discussed in the August 26 application and during the meeting, the Anne Lee Mine is located in the area determined to be a "Vicinity Property" by the U.S. Department of Energy (DOE). DOE is in the process of cleaning up and reclaiming this property, pursuant to Title I of the Uranium Mill Tailings Radiation Control Act ("UMTRCA") as part of the cleanup, stabilization, and reclamation program being undertaken by the DOE for the Ambrosia Lake uranium mill and tailings facility. While our application requests a prior reclamation inspection for the Anne Lee Mine, United Nuclear asserts that this property should be determined to be subject to the exemption in the Act for facilities subject to regulation by the Nuclear Regulatory Commission. This exemption would clearly apply to facilities subject to NRC regulation under UMTRCA, the only difference being the agency that is administering the cleanup.

Old Church Rock Mine

As acknowledged during the meeting, United Nuclear understands that the current operator, Hydro Resources, Inc. (HRI), has submitted a site assessment and prior reclamation application for the Old Church Rock Mine. This mine property is currently held by HRI, pursuant to a lease with Santa Fe Pacific Gold Corp. United Nuclear's only remaining interest in this property is a contractual royalty interest in any future production by HRI. United Nuclear understands that HRI is responsible to fulfill any and all obligations under the New Mexico Mining Act with respect to the Old Church Rock Mine.

Northeast Church Rock, Section 27, and St. Anthony Mines

United Nuclear leased the mineral estate for the Northeast Church Rock Mine (Section 35, T17N, R16W and Section 3, T16W, R16W) from what is now Santa Fe Pacific Gold Corporation, the current owner of the mineral estate. The surface of Sections 35 and 3 is owned by the United States in trust for the Navajo Tribe. United Nuclear owns a portion of the surface of Section 34, T17N, R16W, by virtue of patented claims. Section 34 contains a small portion of the total NECR mine workings. All of the surface disturbance on Section 34 has been reclaimed. Need  
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United Nuclear's lease, expired as of December 31, 1993. As discussed at the September 16 meeting, United Nuclear and Santa Fe Pacific Gold Corporation have not yet resolved all issues regarding United Nuclear's remaining obligations, if any, under the lease.

October 19, 1994

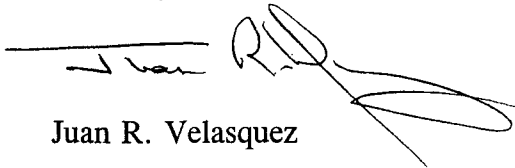
Page 4

United Nuclear leased the mineral estate for the Section 27 Mine (Section 27, T14N, R9W) from what is now Hecla Mining Company, which, to the best of our knowledge, is the current owner of the mineral estate. To the best of our knowledge, the Marquez family owns the surface. United Nuclear's mineral lease for this property was released in March 1988, and United Nuclear has had no interest in this mine since then.

United Nuclear leased the mineral estate for the St. Anthony Mine (portions of Sections 19, 20, 29 and 30, T11N, R4W and Sections 23, 24, 25 and 26, T11N, R5W) from the Cebolletta Land Grant, which was and is the owner of both the surface and mineral estates. United Nuclear released this lease in November 1988, and United Nuclear has had no interest in this mine since then.

Once again, thank you for the opportunity to meet with your staff and to clarify United Nuclear's position on these matters. If you have any additional questions or comments regarding this letter or United Nuclear's position, please feel free to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Juan R. Velasquez", with a long, sweeping horizontal line extending to the right.

Juan R. Velasquez